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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/568,778

03/24/2006

Andres Fraenkel

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25769

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12/15/2008

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EXAMINER

SPISICH, MARK

ART UNIT

PAPER NUMBER

3727

MAIL DATE

DELIVERY MODE

12/15/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/568,778

Applicant(s)

FRAENKEL, ANDRES

Examiner

Mark Spisich

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-47 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 18-47 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/55/08)
Paper No(s)/Mail Date 3/24/2006
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

2. Claim 38 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. "Maximum height" (claim 38, line 3) lacks antecedent. It is suggested that this claim be amended along the lines of claim 39 (that is "maximum height of the suction chamber").

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 18,20,21,28 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Pansini (USP 3,961,393). The patent to Pansini discloses an underwater cleaner comprising a suction nozzle housing (10), exhaust channel (20) connected to a filter device (12), water jet nozzle (any one of 30) coupled to a pressurized water source (24) and further wherein the nozzle(s) (30) are spaced from the "plane" less than the smallest inner width of the exhaust channel (see fig. 3) and they are also includes relative thereto.

5. Claims 18-22,28 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Martin (USP 3,444,575). The patent to Martin discloses an underwater cleaner (10) comprising a suction nozzle housing (12), exhaust channel (20) connected to a filter (80) as well as a jet nozzle (58) spaced from the "plane" less than the smallest inner width of the exhaust channel and included relative thereto (see figure 3).

6. Claims 18,19,40,41,43,44 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Marbach (USP 5,336,403). The patent to Marbach discloses an underwater cleaner comprising a suction nozzle housing (10), exhaust channel (40) connected to a filter (30) and a jet nozzle (22) spaced from the plane (42) less than the smallest inner width of the channel (40) and also inclined relative to the plane.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 23-27 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (USP 3,444,575). With respect to the particular angle and spacing, one of ordinary skill would deem it an obvious choice of mechanical design to modify the device of Martin as claimed.

9. Claims 29-39 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (USP 3,444,575) in view of Balchan et al (USP 6,502,269). The patent to Martin discloses the invention substantially as claimed with the exception of an

integrated means for supplying pressurized fluid to the nozzle. The patent to Balchan discloses such a structure including a pump (1) connected to a nozzle (4) through a connecting line (3) and powered by a battery (column 4, lines 17-20). It would have been obvious to one of ordinary skill to have modified the device of Martin as such so that the device could be used even without an external source of pressurized water. Locating the battery either on the handle or in the housing would be an obvious choice of design.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited patents are all pertinent to pool cleaners that utilize a pressurized water jet with FR '374 showing both a submerged pump/motor and battery.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (5:30-3:00), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Spisich/
Primary Examiner, Art Unit 3727

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